

## Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 CCO-00 /026 R

DRAFTED BY EA/K:PMAYHEW:CHG

APPROVED BY P - MR HABIB

D/HA - MR PALMER

L- MR ALDRICH (DRAFT)

H -AMB. MCCLOSKEY

S/S -MR. BRIDGES

EA - MR MILLER

S---MR. AHERNE

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P 071920Z AUG 76 ZFF4

FM SECSTATE WASHDC

TO USDEL SECRETARY PRIORITY

C O N F I D E N T I A L STATE 196834 TOSEC 200178

EXDIS

E.O. 11652: GDS

TAGS: PFOR, KS, MASS

SUBJECT:ACTION MEMORANDUM: SECTION 412 OF THE INTER-  
NATIONALSECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT  
OF 1976 (S/S 7616968)

TO THE SECRETARY FROM EA-MILLER THROUGH MR HABIB

### 1. THE PROBLEM:

UNDER SECTION 412 OF THE INTERNATIONAL SECURITY ASSIS-  
TANCE AND ARMS EXPORT CONTROL ACT OF 1976, THE PRESIDENT  
IS REQUESTED TO EXPRESS THE CONGRESS' CONCERN OVER HUMAN  
RIGHTS IN KOREA TO THE ROKG WITHIN 60 DAYS AFTER THE  
ACT'S ENACTMENT, I.E., BY AUGUST 30. THE LEGISLATION  
READS:

"THE CONGRESS VIEWS WITH DISTRESS THE EROSION OF  
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IMPORTANT CIVIL LIBERTIES IN THE REPUBLIC OF KOREA  
AND REQUESTS THAT THE PRESIDENT COMMUNICATE THIS  
CONCERN IN FORCEFUL TERMS TO THE GOVERNMENT OF  
THE REPUBLIC OF KOREA WITHIN SIXTY DAYS AFTER

ENACTMENT."

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## 2. BACKGROUND/ANALYSIS:

WE HAVE ON MANY OCCASIONS PUBLICLY DISASSOCIATED OURSELVES FROM THE PARK GOVERNMENT'S ACTIONS AGAINST ITS DOMESTIC CRITICS AND EXPRESSED OUR CONCERN OVER THE HUMAN RIGHTS SITUATION IN KOREA. MOST RECENTLY YOU SAID IN YOUR JULY 22 SPEECH IN SEATTLE THAT "WE WILL CONTINUE TO REMIND THE SOUTH KOREAN GOVERNMENT THAT RESPONSIVENESS TO THE POPULAR WILL AND SOCIAL JUSTICE ARE ESSENTIAL IF SUBVERSION AND EXTERNAL CHALLENGE ARE TO BE RESISTED."

PRIVATELY, AMBASSADOR SNEIDER, ON YOUR INSTRUCTIONS, MET WITH PRESIDENT PARK AT THE TIME OF THE IMPLEMENTATION OF EMERGENCY MEASURE NO. 9 IN 1975 TO EXPRESS OUR CONCERN THAT PUBLIC AND CONGRESSIONAL REACTION TO THE ROKG'S SUPPRESSION OF ITS DOMESTIC CRITICS WAS THREATENING OUR ABILITY TO MAINTAIN SUPPORT FOR OUR SHARED PROGRAMS AND POLICIES. PARK REPLIED THAT HE RECOGNIZED THE PRESSURES ON THE ADMINISTRATION BUT THAT HE FELT HE MUST CONTINUE HIS CURRENT INTERNAL POLICY UNTIL THE SITUATION IS SUFFICIENTLY STABILIZED IN THE ROK. SINCE THAT TIME LEADING ADMINISTRATION FIGURES HAVE PRIVATELY REITERATED THIS CONCERN TO PRESIDENT PARK, THE PRIME MINISTER AND OTHER LEADING ROKG FIGURES. WE UNDERSTAND A NUMBER OF THE ROKG'S FRIENDS IN CONGRESS HAVE ALSO TOLD THE ROKG THAT THEY NOW EXPECT IT TO RECIPROCATATE THEIR EFFORTS ON ITS BEHALF BY SHOWING SOME MODERATION TOWARD DOMESTIC CRITICS.

THESE APPROACHES MAY ENCOURAGE A DEGREE OF LENIENCY SUCH AS MITIGATING THE EVENTUAL SENTENCES OF CER-  
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TAIN PROMINENT CRITICS OF THE ROKG NOW ON TRIAL, AND HAVE HAD SOME LIMITED MODERATING EFFECT ON THE ROKG'S TREATMENT OF DOMESTIC CRITICS. RECENT EMBASSY REPORTING INDICATES THAT PRESIDENT PARK NOW FEELS HIS DOMESTIC CRITICS ARE UNDER CONTROL, AND SOME ROKG FIGURES HAVE TOLD US THAT WHILE THEY DO NOT EXPECT THE CONTROL MEASURES TO BE RELAXED, SOME GESTURE TO US CONCERNS, PERHAPS IN REGARD TO SENTENCING IN ONGOING TRIALS MAY BE MADE IN THE COURSE OF THE U.S. ELECTIONS.

WE HAVE SEEN A CLEAR EROSION IN CONGRESSIONAL SUPPORT FOR KOREA OVER THE PAST EIGHTEEN MONTHS. WE HAD TO UNDER-

TAKE STRENUOUS EFFORTS TO DEFEAT THE FRASER AMENDMENT ON CEILINGS AS WELL AS AN ATTEMPT TO REQUIRE A PHASED WITHDRAWAL OF U.S. TROOPS FROM KOREA. THE PRESENT SECTION OF THE LAW, TOGETHER WITH A REPORTING REQUIREMENT ON U.S. FORCES IN KOREA, BECAME THE ALTERNATIVES TO SUCH RESTRICTIVE LEGISLATION.

WE ARE ASSUMING THAT WE WILL INFORM THE CONGRESS OF THE SUBSTANCE AND METHOD OF TRANSMISSION OF ITS EXPRESSION OF CONCERN (AS WELL AS ANY ROKG RESPONSE). WE BELIEVE THIS WOULD BEST BE DONE BY LETTERS FROM AMBASSADOR MCCLOSKEY TO THE CHAIRMEN OF THE FOREIGN AFFAIRS COMMITTEES, WHICH ARE CHARGED WITH OVERSEEING THE LEGISLATION.

### 3. THE OPTIONS:

#### (1) SUBSTANCE

A DRAFT NOTE FOLLOWS IN PARA 6 WHICH WE REGARD AS THE BEST APPROACH. I BELIEVE IT MEETS THE CONGRESSIONAL REQUIREMENTS WITHOUT RISKING A REACTION THAT WOULD CAUSE PROBLEMS IN OUR BILATERAL RELATIONS. ITS TONE IS SERIOUS, BUT NOT THREATENING. I THINK IT WILL BE REGARDED AS "FORCEFUL" ENOUGH FOR MOST OF THE CONGRESS, ALTHOUGH IT IS NOT LIKELY TO SATISFY THE ROKG'S SEVEREST CRITICS (WHICH IN ANY CASE WE CANNOT HOPE TO DO). WE HAVE NOT CONSIDERED A STRICTLY PRO FORMA TRANSMISSION OF THE CONFIDENTIAL

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CONGRESS' CONCERN AS THIS WOULD BE SEEN AS INSUFFICIENTLY "FORCEFUL" AND WOULD NOT SATISFY THE INTENT OF THE LEGISLATION.

WE HAVE NOT INCLUDED IN THE DRAFT ANY PREDICTION THAT KOREAN UNRESPONSIVENESS MIGHT RESULT IN RESTRICTIVE LEGISLATION. IN VIEW OF THE NEED TO DISCLOSE THIS DOCUMENT TO CONGRESS, THE INCLUSION OF SUCH A PREDICTION COULD COMPLICATE OUR EFFORTS TO AVOID HARMFUL LEGISLATION. NEVERTHELESS, THE RISK OF CONGRESSIONAL ACTION IS A REAL ONE WHICH SHOULD BE REITERATED ORALLY TO THE KOREANS AT THE TIME THE FORMAL COMMUNICATION IS DELIVERED. WE WOULD, THEREFORE, INCLUDE THIS SUBJECT IN TALKING POINTS ACCOMPANYING THE COMMUNICATION OF THE NOTE.

#### (2) THE FORM OF THE TRANSMISSION OF CONCERN

-- THE LEGISLATION DOES NOT SPECIFY THE FORM IN WHICH CONGRESS DESIRES ITS CONCERN TO BE TRANSMITTED, AND IT COULD PRESUMABLY BE VERBAL. HOWEVER, THE ADVANTAGES OF HAVING A WRITTEN RECORD SO OUTWEIGH ANY ADVANTAGES OF AN ORAL APPROACH THAT WE HAVE NOT INCLUDED HERE THE OPTION

OF A SOLELY ORAL APPROACH.

THERE ARE THUS BASICALLY TWO PROCEDURAL QUESTIONS -- WHETHER THE COMMUNICATION IS A LETTER OR NOTE AND AT WHAT LEVEL THE COMMUNICATION IS TO BE TRANSMITTED. THE STATUTE CALLS ON THE PRESIDENT TO COMMUNICATE THE CONCERNS EXPRESSED. THIS WOULD BE MOST DIRECTLY ACHIEVED BY A LETTER FROM THE PRESIDENT TO PRESIDENT PARK. HOWEVER, SUCH A LETTER WOULD BE CONSIDERED BY PARK AS A DIRECT CONFRONTATION AND MIGHT WELL RESULT IN A STIFFENING OF HIS POSITION THAT WOULD BE UNHELPFUL TO THE HUMAN RIGHTS SITUATION AS WELL AS AFFECTING OUR BILATERAL RELATIONS.

RATHER WE BELIEVE APPROPRIATE FORMS AND LEVELS FOR THE COMMUNICATION ARE:

(A) A THIRD PERSON NOTE DELIVERED TO MINISTER OF FOREIGN AFFAIRS IN SEOUL BY THE CHARGE (IN THE AMBASSADOR'S ABSENCE ON HOME LEAVE); OR  
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(B) YOU, OR UNDER SECRETARY FOR POLITICAL AFFAIRS HABIB, OR ASSISTANT SECRETARY HUMMEL CALL IN ROKG AMBASSADOR HAHM TO PRESENT SUCH A NOTE.

(C) THE NOTE COULD BE PRESENTED IN BOTH WASHINGTON AND SEOUL.

-- ANY OF THESE WOULD BE FORMAL GOVERNMENT-TO-GOVERNMENT APPROACHES AND WOULD MEET THE REQUIREMENTS OF THE ACT; HOWEVER, CALLING IN THE AMBASSADOR HERE WOULD BE REGARDED BY THE CONGRESS AS A MORE SERIOUS AND APPROPRIATELY "FORCEFUL" APPROACH. IF THE AMBASSADOR WERE CALLED IN HERE, THE ROK WOULD BE MORE LIKELY TO APPRECIATE THE SERIOUSNESS WITH WHICH WE LOOK UPON THE EROSION OF ITS CONGRESSIONAL SUPPORT. IT WOULD ALSO GIVE THE ROKG AN EXCELLENT OPPORTUNITY TO RESPOND BY EXERCISING SOME MODERATION IF IT IN FACT WISHES TO DO SO.

-- IF PUBLICITY IS DESIRED, AN ANNOUNCEMENT COULD BE MADE BY THE DEPARTMENT SPOKESMAN AFTER THE TEXT OF THE NOTE HAS BEEN RECEIVED IN SEOUL.

THE QUESTION OF TIMING IS IMPORTANT. WE MUST DELIVER THE CONGRESS' EXPRESSION OF CONCERN BEFORE AUGUST 30 AND WISH TO DO SO AT LEAST SOME DAYS BEFORE THE DEADLINE.

#### 4. BUREAU VIEWS:

EA AND H BELIEVE THAT UNDER SECRETARY HABIB SHOULD CALL IN ROK AMBASSADOR HAHM AS SOON AS POSSIBLE TO PRESENT

THE NOTE IN PARA 6. PRESENTATION AT THE UNDER SECRETARY LEVEL WILL DEMONSTRATE THE SERIOUSNESS WITH WHICH WE VIEW THE CONGRESS' CONCERN.

L AND D/HA BELIEVE THAT EITHER YOU OR UNDER SECRETARY HABIB SHOULD CALL IN AMBASSADOR HAHM.

L BELIEVES THAT THIS ACTION, WHICH IS BY LAW REQUESTED OF THE PRESIDENT, SHOULD BE CARRIED OUT AT A SENIOR LEVEL  
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IN WASHINGTON, AND THAT IT WOULD HELP TO EMPHASIZE THIS ACTION IF THE NOTE WERE ALSO DELIVERED IN SEOUL. EA BELIEVES THAT IT WOULD BE USEFUL TO DELIVER THE NOTE IN SEOUL AS WELL AS IN WASHINGTON, AS A COURTESY AND ALSO TO ENSURE THAT THE COMMUNICATION IS CLEARLY UNDERSTOOD.

5. RECOMMENDATION:

(1) SUBSTANCE AND PROCEDURE:

(A) THAT WE USE THE NOTE IN PARAGRAPH 6.

APPROVE:

DISAPPROVE:

B. THAT UNDER SECRETARY FOR POLITICAL AFFAIRS HABIB CALL IN THE AMBASSADOR AS SOON AS CONVENIENT TO PRESENT THE NOTE. EA, H, L AND D/HA RECOMMEND THIS OPTION.

APPROVE:

DISAPPROVE:

ALTERNATIVELY, THAT ASSISTANT SECRETARY HUMMEL DO SO.

APPROVE:

DISAPPROVE:

ALTERNATIVELY, THAT YOU DO SO.

APPROVE:

DISAPPROVE:

C. THAT NOTE SHOULD BE DELIVERED IN SEOUL, IN ADDITION TO DELIVERY HERE. (EA AND L RECOMMEND)

APPROVE:

DISAPPROVE:

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DELIVERY IN SEOUL ONLY, AS ALTERNATIVE TO DELIVERY HERE  
(NO BUREAU RECOMMENDS THIS).

APPROVE:

DISAPPROVE:

(2) PUBLICITY

THAT THE DEPARTMENT'S PRESS SPOKESMAN ANNOUNCE THAT THE  
NOTE HAS BEEN DELIVERED AND RELEASE THE TEXT OF THE NOTE  
AFTER IT HAS BEEN RECEIVED IN SEOUL.

APPROVE:

DISAPPROVE:

ALTERNATIVELY, WE SHOULD IMMEDIATELY TRANSMIT TO CON-  
CERNED FOREIGN AFFAIRS COMMITTEES NOTICE OF OUR ACTION  
AND A COPY OF THE NOTE. WE WOULD NOT MAKE ANNOUNCEMENT  
BUT WOULD, IF QUERIED, BE PREPARED TO CONFIRM APPROACH.  
(HABIB PREFERS THIS ALTERNATIVE.)

APPROVE:

DISAPPROVE:

6. DRAFT NOTE:

THE SECRETARY OF STATE PRESENTS HIS COMPLIMENTS  
TO HIS EXCELLENCY THE AMBASSADOR OF THE REPUBLIC  
OF KOREA AND HAS THE HONOR TO REFER TO THE INTER-  
NATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CON-  
TROL ACT OF 1976, WHICH WAS RECENTLY SIGNED INTO  
LAW BY THE PRESIDENT OF THE UNITED STATES.

SECTION 412 OF THE ACT READS AS FOLLOWS:

"THE CONGRESS VIEWS WITH DISTRESS THE  
EROSION OF IMPORTANT CIVIL LIBERTIES IN THE  
REPUBLIC OF KOREA AND REQUESTS THAT THE PRESI-  
DENT COMMUNICATE THIS CONCERN IN FORCEFUL TERMS  
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TO THE GOVERNMENT OF THE REPUBLIC OF KOREA WITHIN  
SIXTY DAYS AFTER ENACTMENT."

THE SECRETARY, ACTING ON BEHALF OF THE PRESIDENT  
PURSUANT TO THIS PROVISION OF LAW, WISHES TO CALL

THE ATTENTION OF THE AMBASSADOR TO THIS ACTION  
OF THE UNITED STATES CONGRESS.

THE AMERICAN GOVERNMENT AND PEOPLE HAVE LONG ATTACHED THE GREATEST IMPORTANCE TO THE OBSERVANCE OF HUMAN RIGHTS, BOTH IN THE UNITED STATES AND ELSEWHERE. THE POLICIES WHICH THE UNITED STATES HAS PURSUED ABROAD HAVE ALWAYS REFLECTED THIS SIGNIFICANT ASPECT OF THE AMERICAN NATIONAL HERITAGE. AS PRESIDENT FORD SAID IN A MESSAGE TO THE UNITED STATES SENATE ON MAY 7, 1976, "... THE ADMINISTRATION IS FULLY SUPPORTIVE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS AS A STANDARD FOR ALL NATIONS TO RESPECT." IN THE CASE OF THE REPUBLIC OF KOREA, THE SECRETARY OF STATE SAID IN AN ADDRESS JULY 22 THAT "WE WILL CONTINUE TO REMIND THE SOUTH KOREAN GOVERNMENT THAT RESPONSIVENESS TO THE POPULAR WILL

AND SOCIAL JUSTICE ARE ESSENTIAL IF SUBVERSION AND EXTERNAL CHALLENGE ARE TO BE RESISTED."

IN THIS CONNECTION THE SECRETARY WISHES TO NOTE TO THE AMBASSADOR THAT THE INTEREST IN THE UNITED STATES IN THE OBSERVANCE OF HUMAN RIGHTS IN OTHER COUNTRIES IS UNDERSTANDABLY GREATER IN THOSE COUNTRIES -- SUCH AS THE REPUBLIC OF KOREA -- WITH WHICH THE UNITED STATES ENJOYS PARTICULARLY CLOSE RELATIONS BUILT UP OVER MANY YEARS OF FRIENDSHIP AND MUTUAL SACRIFICE. THE CONTINUED SUPPORT OF THE CONGRESS AND THE AMERICAN PEOPLE IS ESSENTIAL TO THE MAINTENANCE OF THIS RELATIONSHIP. AS THE AMBASSADOR IS AWARE, THESE CONCERNS OF THE UNITED STATES GOVERNMENT HAVE PREVIOUSLY BEEN BROUGHT TO HIS ATTENTION AND TO THE ATTENTION OF HIS GOVERNMENT.

THE SECRETARY REQUESTS THAT THE AMBASSADOR BRING TO THE ATTENTION OF THE HIGHEST LEVELS OF THE GOVERNMENT  
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OF THE REPUBLIC OF KOREA THE CONCERN OF THE CONGRESS EXPRESSED IN THE TEXT OF SECTION 412 OF THE INTERNATIONAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT OF 1976, AND FURTHER REQUESTS THAT THIS RECEIVE THE MOST SERIOUS CONSIDERATION OF THE KOREAN GOVERNMENT.

DEPARTMENT OF STATE  
WASHINGTON

7. CLEARED BY H - MR MCCLOSKEY; L - MR ALDRICH;  
D/HA - MR PALMER; S - MR. AHERNE.

8. DRAFTED BY EA/K:PMAYHEW

HABIB

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## Message Attributes

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